(1)

90-94

No. _____

IN THE
Supreme Court of the United States
October Term, 1989

FLORIDA DEPARTMENT OF LABOR
AND EMPLOYMENT SECURITY,

Petitioner,

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

STEPHEN D. BARRON
General Counsel

DAVID J. BUSCH
Attorney
(Counsel of Record)

Office of General Counsel
Florida Department of Labor
and Employment Security
307 Hartman Building
2012 Capital Circle, S.E.
Tallahassee, Florida 32399-0657
Telephone No.: (904) 488-6705

COUNSEL FOR PETITIONER

QUESTION PRESENTED FOR REVIEW

Whether, pursuant to the interest section of the Debt Collection Act, the federal government may charge interest on a debt owed it by a state under a contract executed and completed before October 25, 1982, the claim for which was made prior to that date.

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TABLE OF AUTHORITIES

THE OPINIONS IN THE COURT AND ADMINISTRATIVE AGENCIES BELOW

The opinion sought to be reviewed is *United States of America v. State of Florida Department of Labor and Employment Security,* Case No. 89-3700 (April 13, 1990; 11th Cir.), unpublished. That decision affirmed the final order and judgment of the United States District Court for the Northern District of Florida, which, as to the question presented for review, held that the federal government may charge interest on a debt owed it by a state. The federal government's claim for interest began with the issuance of a "certificate of indebtedness" signed by Linda Kontnier on April 15, 1986. In her certificate Ms. Kontnier summarized the prior administrative proceedings and opined that interest was due on a principal amount of $173,268.61 from May 19, 1985. These three opinions are reprinted in the appendix accompanying the petition. References to the materials contained in the appendix will be made by the notation "(Pet. App.)." The court of appeals opinion appears at Pet. App. A-2; the District Court opinion appears at Pet. App. A-4; the Kontnier opinion appears at Pet. App. A-6.

JURISDICTION

The decision of the court of appeals was entered April 13, 1990. This petition has been filed and docketed within the period established by Supreme Court Rule 13.1 and 28 U.S.C. § 2101(c).

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 31, Chapter 37, United States Code

§ 3701. Definitions and application

• • •

(c) In section 3716 and 3717 of this title, "person" does not include an agency of the United States Government, of a State government, or of a unit of general local government.

§ 3717. Interest and penalty on claims

(a)(1) The head of an executive or legislative agency shall charge a minimum annual rate of interest on an outstanding debt on a United States Government claim owed by a person that is equal to the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole percentage

point. The Secretary of the Treasury shall publish the rate before November 1 of that year. The rate is effective on the first day of the next calendar quarter.

(2) The secretary may change the rate of interest for a calendar quarter if the average investment rate for the 12-month period ending at the close of the prior calendar quarter, rounded to the nearest whole percentage point, is more or less than the existing published rate by 2 percentage points.

• • •

(g) This section does not apply—

• • •

(2) to a claim under a contract executed before October 25, 1982, that is in effect on October 25, 1982.

• • •

STATEMENT OF THE CASE

The opinions of the Eleventh Circuit Court of Appeals, the United States District Court (USDC) and the United States Department of Labor, Division of Debt Management (DOL) reflect the following facts:

The Florida Department of Labor and Employment Security (FDOLES) received grants under the Comprehensive Employment and Training Act of 1973 (CETA) between 1974 and 1977 totaling $102,063,139. The grants were audited by DOL's Atlanta Regional Office. DOL's final audit report #04-9-1626-L-008-G-001 was issued November 30, 1979, with costs recommended for disallowance of $1,278,287.93. The parties worked together in an effort to reduce the recommended disallowances. The result was described by DOL as follows:

> The Grant Officer's Findings and Determination was issued on July 13, 1981, disallowing $870,847 *and establishing a debt in that amount.* (Emphasis added.) (Pet. App. A-7)

FDOLES appealed the Findings and Determination to DOL's Office of Administrative Law Judges (ALJ) (Case No. 81-CTA-202). Between May 19, 1982 and the date of the administrative hearing, the disputed amount was reduced to $205,557.61. On February 1, 1984, ALJ Sobernheim issued an Order upholding disallowances of $173,557.61.

On April 2, 1984, FDOLES petitioned the Eleventh Circuit Court of Appeals (Case No. 84-3223) for review of the ALJ Order. On February 26, 1985, the Court of Appeals affirmed the ALJ Order.

On July 1, 1987, DOL filed a complaint,

> . . . *to enforce a claim of the United States established by a Grant Officer* for the United States Department of Labor as affirmed by an Administrative Law Judge and upheld by the Eleventh Circuit Court of Appeals on February 26, 1985 (Case No. 84-3223). (Emphasis added.) (Pet. App. A-4).

The USDC added $62,248.31 to the principal amount for a total sum of $235,517.14. (Pet. App. A-5).

An FDOLES appeal to the Eleventh Circuit Court of Appeals resulted in an opinion which concluded:

> Further, the district court properly awarded interest pursuant to 31 U.S.C. § 3717(g)(2). *See Florida Department of Labor and Employment Security v. United States Department of Labor*, No. 89-3015 (11th Cir. Feb. 9, 1990) [893 F.2d 1319]. [Pet. App. A-10] Accordingly, we affirm. (Pet. App. A-3).

The case cited immediately above is now pending certiorari review by this Court in Case No. 89-1765.

REASONS FOR GRANTING THE WRIT

By refusing to apply the provisions of the Debt Collection Act, the Eleventh Circuit Court of Appeals has misconstrued an important section of the Act contrary to decisions reached by two other circuit courts of appeal.

The interest and penalty section of the Debt Collection Act does not apply "to a claim under a contract executed before October 25, 1982, *that is in effect on October 25, 1982.*" 31 U.S.C. § 3717(g)(2). (Emphasis added.) The plain meaning of that language leads to the conclusion that if a contract executed before October 25, 1982, is *not* in effect subsequent to that date, the interest and penalty section does apply to a claim under the contract, unless otherwise exempted.

I. Decisions by Other Circuit Courts of Appeals

In *Perales v. United States,* 751 F.2d 95 (2nd Cir. 1984), the Court reviewed a summary judgment holding that the Department of Agriculture is not authorized to charge interest on debts arising out of the Food Stamp Program, 7 U.S.C. § 2011 *et seq.*, due it from the Department of Social Services of the State of New York. The Court affirmed the summary judgment ". . . for substantially the reasons stated in the district court's opinion." Id. The district court opinion reveals that each claim was for a period between October, 1980 and March, 1982. The district court found that the provisions of the Debt Collection Act, specifically § 3717, did apply, but that the State of New York did not have to pay interest on the debt because of the definition of "person" at § 3701(c).

In *Commonwealth of Pennsylvania, Department of Public Welfare v. United States,* 781 F.2d 334 (3rd Cir. 1986), the Court reviewed a summary judgment holding that the Department of Agriculture is not authorized to charge interest on debts arising out of the Food Stamp Program, citing *Perales, supra,* as authority for holding that the Debt Collection Act abrogated the federal com-

mon law allowing the federal government to charge interest to states. The opinion does not discuss the time period for the contracts and the district court summary judgment is not reported. However, the district court judgment resulted from a *de novo* review of a State Food Stamp Appeals Board order dated July 6, 1983, reviewing the same debt. *Id.* at 337. On those facts, the underlying contract was not considered to be "in effect on October 25, 1982." The Third Circuit Court of Appeals found that the Debt Collection Act, specifically § 3717, did apply, but that the State of Pennsylvania did not have to pay interest on the debt because of the definition of "person" at § 3701(c).

II. Misconstruction of 31 U.S.C. § 3717(g)(2)

Like the circuit courts above, DOL found that the Debt Collection Act applied to the facts of this case. DOL insists, however, that the Act did not abrogate the Federal government's common law right to assess interest against a state agency even though the agency was not a "person" as the term is used in section 3717 of the Act. 31 U.S.C. § 3701(g)(2) provides:

> (g) This section [interest and penalty on claims] does not apply—
>
> • • •
>
> (2) to a claim under a contract executed before October 25, 1982, that is in effect on October 25, 1982.

The Eleventh Circuit Court of Appeals has interpreted the clause "that is in effect on October 25, 1982," to mean that even though a debt amount has been fixed as owing for a contractual period prior to October 25, 1982, the contract remains in effect for so long as the debtor continues to monitor its obligations past that date. In a footnote to an earlier decision involving the same parties, the Court explained:

> This conclusion does not nullify the second clause of § 3717(g)(2). As stated earlier, § 3717(g)(2) provides that § 3717's mandatory imposition of interest requirements are not applicable "to a claim under contract executed before October 25, 1982, that is in effect on October 25, 1982." The "in effect on October 25, 1982" clause could have a meaning independent of the prior clause—e.g., a contract executed before October 25, 1982, but not taking effect until January 1, 1983, might not fall within the purview of § 3717(g)(2) and, consequently, might not be covered by the Debt Collection Act.

Florida Department of Labor and Employment Security v. United States Department of Labor, 893 F.2d 1319 (11th Cir. 1990) at 1323, fn. 8. (Pet. App. A-21) Petitioner knows of no rule of statutory construction that would allow for giving the second clause a meaning independent of the first. Congress clearly intended that where a contract had been completed so that the obligations of the parties were ascertainable, any resultant claim would be subject to an interest assessment.

The construction given by the Court will now allow contractors to argue that as long as they are obligated to

monitor and audit subcontractor activities, the underlying contracts remain "in effect" and the contractors' liquidated debts are not subject to an interest assessment.

III. *West Virginia v. United States,* 479 U.S. 305 (1987).

In the decision cited above, the Eleventh Circuit Court of Appeals also misapplied this Court's decision in *West Virginia v. United States, supra.* In that case, the contractual obligations for disaster relief arose ten years before enactment of the Debt Collection Act of 1982. This Court declined to apply the provisions of the Act because the contract and claim predated enactment of the interest and penalty provisions of the Act. The Court of Appeals focused on a portion of a footnote to this Court's opinion, which reads:

> As stated in § 3717(g)(2), this *statute* does not apply to claims arising under contracts entered into before October 25, 1982, and therefore has no force here. (Emphasis added.)

Id. at 312.

31 U.S.C. § 3717(g)(2) states that the *section* (interest and penalty on claims) does not apply to claims on contracts executed before and in effect on October 25, 1982. The *statute* as a whole took effect on October 25, 1982, and made interest and penalty provisions applicable to outstanding debts fixed subsequent to that date. When the grant officer in this case issued his initial determination on July 13, 1981, seeking a payment from Florida in the amount of $870,847, the Debt Collection Act *statute* was clearly not in force and not applicable to this claim.

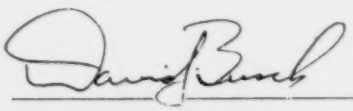
Until that initial determination there was no "claim", i.e., "amounts due the Government." 31 U.S.C. § 3701(b).

This argument is consistent in every respect with the holding in *West Virginia* because the Debt Collection Act of 1982 was not in effect when the Government made its claim in 1981.

CONCLUSION

The decision of the Eleventh Circuit Court of Appeals holding that the Debt Collection Act of 1982 has no application to a federal claim established prior to the effective date of the Act. The dollar amount of the interest claim, the significance of this issue, and the impact of the Eleventh Circuit opinion are all enormous. Accordingly, Petitioner respectfully requests that this Petition for Writ for Certiorari be granted.

Respectfully submitted,



DAVID J. BUSCH
Attorney for Petitioner
Florida Department of Labor
and Employment Security
307 Hartman Building
2012 Capital Circle, S.E.
Tallahassee, Florida 32399-0657

Telephone No.: (904) 488-6705

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FLORIDA DEPARTMENT OF LABOR
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UNITED STATES OF AMERICA,

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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and Employment Security
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2012 Capital Circle, S.E.
Tallahassee, Florida 32399-0657
Telephone No.: (904) 488-6705

COUNSEL FOR PETITIONER

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

STATE OF FLORIDA
DEPARTMENT OF LABOR
& EMPLOYMENT SECURITY,

Defendant-Appellant.

No. 89-3700
Non-Argument Calendar

D.C. Docket No. TCA 87-40166-MMP

Appeal from the United States District Court
for the Northern District of Florida

United States Court of Appeals,
Eleventh Circuit

April 13, 1990

Before TJOFLAT, Chief Judge, JOHNSON and HATCHETT, Circuit Judges.

PER CURIAM:

The United States brought this action to enforce a previous judgment of this court. *Florida Department of Labor and Employment Security v. United States Department of Labor,* No. 84-3223 (11th Cir. Feb. 26, 1985) (affirming an administrative law judge's decision ordering the Florida Department of Labor and Employment Security (FDLES)

to repay a certain amount because of disallowed expenditures under the Comprehensive Employment and Training Act grant program). The district court entered judgment in favor of the United States in the amount of $173,268.61 as principal, plus interest of $62,248.53. Contrary to FDLES's assertions, this action is not time barred by the provisions of 28 U.S.C. § 2415. Further, the district court properly awarded interest pursuant to 31 U.S.C. § 3717(g)(2). *See Florida Department of Labor and Employment Security v. United States Department of Labor,* No. 89-3015 (11th Cir. Feb. 9, 1990). [Pet. App. A-10] Accordingly, we affirm.

AFFIRMED.

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF FLORIDA
DEPARTMENT OF LABOR
& EMPLOYMENT SECURITY,

Defendant.

No. TCA 87-40166-MMP

United States District Court,
Northern District of Florida,
Tallahassee Division

Final Order and Judgment

This is an action to enforce a claim of the United States established by a Grant Officer for the United States Department of Labor as affirmed by an Administrative Law judge and upheld by the Eleventh Circuit Court of Appeals on February 26, 1985 (Case No. 84-3223).

Jurisdiction is founded upon 28 U.S.C. § 1345.

Defendant asserts that this action is time barred by virtue of 28 U.S.C. § 2415, which places a six-year time limit upon the government ". . . for money damages . . . founded upon a contract. . . ." This assertion is not well founded. This action is *not* an action founded upon a contract, rather, this is a suit by the government to recover improperly dispersed federal grant funds as determined by the Administrative Law Judge and affirmed by the

Eleventh Circuit Court of Appeals. It was only after the Court of Appeals entered its judgment that the instant suit was instituted to collect the amount found due. The viability of the government's claim and the amount due to it have been established by the judgment of the Eleventh Circuit—it will not, and cannot, be re-litigated here.

Judgment to enter in favor of the government and against the State of Florida, Department of Labor and Employment Security, for the sum of $173,268.61 as principal, plus interest of $62,248.53 for a total sum of $235,517.14, and costs of this action.

DONE AND ORDERED this 17th day of May, 1989.

MAURICE M. JAREL
United States District Judge

CERTIFICATE OF INDEBTEDNESS

STATE OF FLORIDA,
DEPARTMENT OF LABOR
AND EMPLOYMENT SECURITY
Wallace E. Orr, Secretary
The Berkeley Building, Suite 206
2590 Executive Center Circle East
Tallahassee, Florida 32301

In Reply Refer to:
ETA/OPFI/DDM

File Ref:
ALJ Case No. 81-CTA-202

Date of First Demand:
April 1, 1985

Credit:
Symbol: 16MO174
Amount: $186,612.12

The Florida Department of Labor and Employment Security ("Grantee"), received grants under the Comprehensive Employment and Training Act of 1973 between 1974 and 1977 with funds amounting to $102,063,139. The grants were audited by the Department of Labor's (DOL) Atlanta Regional Office for Audit. The Department's final audit report #04-9-1626-L-0008-G-001 was issued November 30, 1979, with costs recommended for disallowance of $1,278,287.93.

Subsequent to the issuance of the audit, the Grantee and the U.S. Department of Labor worked together to review documentation which the Grantee was able to present in an effort to reduce the recommended disallowances. The Grant Officer's Findings and Determination was issued on July 13, 1981, disallowing $870,847 and establishing a debt in that amount.

Counsel for the Grantee appealed the Findings and Determination to the DOL's Office of Administrative Law Judges (ALJ) (Case No. 81-CTA-202). DOL reviewed additional documentation which was presented for consideration. Based upon this review, on May 19, 1982, DOL issued an amended Findings and Determination reducing the disallowances to $457,570. Subsequent reviews resulted in two additional amended Findings and Determinations on June 11, 1982 and January 6, 1983, reducing the disallowances to $449,230 and to $413,791, respectively. Between January 6, 1983 and January 14 and 15, 1984 when a hearing was held before Administrative Law Judge Rudolf Sobernheim, additional documentation reduced the amount in dispute to $205,283.

On February 1, 1984, Administrative Law Judge Sobernheim issued a Decision and Order upholding disallowances of $173,557.61.

On April 2, 1984, the Grantee petitioned the U.S. Court of Appeals for the Eleventh Circuit (Case Number 84-3223) for review of the ALJ Order. On February 26, 1985, the Court of Appeals affirmed the ALJ Order.

On April 1, 1985, Grant Officer Eves issued a first demand letter requesting immediate payment of the amount upheld by the ALJ and affirmed by the U.S. Court of

Appeals ($173,557.61). The Grantee responded in a letter of April 11, 1985, by requesting a review of discrepancies among the subgrantee audits, the Findings and Determination, and the ALJ Decision. Based upon further review, DOL revised the debt amount to $173,268.61 and notified the Grantee of the revised debt amount in a demand letter of April 19, 1985, which also notified the Grantee that interest was being assessed at 9 percent and was chargeable if not paid by May 19, 1985.

In a letter to Grant Officer Eves of May 20, 1985, the Grantee requested relief from the debt. In a second demand letter of May 31, 1985, the Grant Officer informed the Grantee of the possibility of referral of the case to the U.S. Department of Justice for litigation if payment was not made.

In a letter of June 27, 1985, the Grantee again requested relief from its obligation, specifically requesting that the Department compromise a portion of the debt related to each grant and terminate the balance. In a letter of July 17, 1985, the Grant Officer notified the Grantee that under current regulations, the Regional Administrator for the Employment and Training Administration could not compromise or terminate the debt, and again requested full payment. (The letter cited the Regional Administrator's authority limitation regarding terminating and compromising debts. However, in accordance with the standards set forth in 4 CFR, Sections 103.2–103.4 and 104.3, DOL would not recommend this debt for compromise or termination.)

On August 6, 1985, the Grant Officer and the Regional Administrator met with Wallace E. Orr, Secretary for the State of Florida Department of Labor and Employment

Security to seek resolution of the debt and discuss settlement options regarding five other audit cases involving the Grantee which were in various stages of the administrative appeal process and involved potential DOL claims against the Grantee of $1,669,260. In a letter of August 19, 1985, and during telephone conversations on that date, the Grantee notified Grant Officer Eves that no resources were available from which to make payment.

Accordingly, there is now due to the United States the amount of $186,612.12 computed as follows:

Amount upheld by ALJ Decision and Order and affirmed by U.S. Court of Appeals (as adjusted)	$173,268.61
Interest charges as of 3/31/86 based upon due date of May 19, 1985	13,343.51
Total amount due the United States	$186,612.12

CERTIFICATION

Pursuant to 28 U.S.C. Section 1746, I certify that, to the best of my knowledge and upon penalty of perjury, the information contained in this Certification of Indebtedness is true and correct.

Linda Kontnier

(Signature)

4/15/86

(Date Signed)

LINDA KONTNIER, Chief,
Division of Debt Management

FLORIDA DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY,

Petitioner,

v.

UNITED STATES DEPARTMENT OF LABOR,

Respondent.

No. 89-3015.

United States Court of Appeals, Eleventh Circuit.

Feb. 9, 1990.

Review was sought of Secretary of Labor's final decision and order requiring Florida Department of Labor and Employment Security to repay certain costs incurred by its subgrantees of grant given to Florida Department of Labor and Employment Security pursuant to Comprehensive Employment and Training Act. The Court of Appeals, Anderson, Circuit Judge, held that Debt Collection Act did not apply and, thus Secretary was not precluded from recovering prejudgment interest.

Affirmed.

Petition for Review of Final Decision and Order of the Department of Labor.

Before TJOFLAT, Chief Judge, JOHNSON and ANDERSON, Circuit Judges.

ANDERSON, Circuit Judge:

This case comes to us on review of the Secretary of Labor's final decision and order requiring the State of Florida Department of Labor and Employment Security ("FDOLES") to repay certain costs incurred by FDOLES's subgrantees of a grant given to FDOLES by the U.S. Department of Labor ("DOL") pursuant to the Comprehensive Employment and Training Act ("CETA").[1] The only issue on appeal is whether the Secretary was precluded by the Debt Collection Act of 1982[2] from requiring FDOLES to pay prejudgment interest. Because we find that the provisions of the Debt Collection Act are not applicable under the facts of this case, we affirm the Secretary's imposition of prejudgment interest.

I. BACKGROUND

Between October 1, 1980 and June 30, 1982, FDOLES received approximately $27,259,029 in CETA funds. A May 24, 1984 audit of FDOLES and FDOLES's subgrantees' records questioned $327,598 in expenditures. A grant officer reviewed the audit and issued an initial determination disallowing $145,460 of the questioned costs. This determination informed FDOLES that DOL considered $55,801 of the disallowed total to be owed to DOL and noted that DOL would charge interest on disallowed costs beginning 30 days after the grant officer's final determination.

In response to the grant officer's initial determination, FDOLES submitted documentation for some of the disallowed costs and requested waiver of repayment. *See* 20 C.F.R. § 676.88(c). Upon consideration of the FDOLES

submission, the grant officer made a final determination in which he reduced the disallowed costs to $104,096, and ordered FDOLES to repay $14,437 with interest.

FDOLES requested an ALJ hearing to reconsider the grant officer's determination. At that hearing, FDOLES submitted evidence that it had collected a portion of its debt from its subrecipients of the federal CETA grant, and it renewed its arguments for a waiver of repayment.

The ALJ rejected the request for a waiver of repayment, reasoning that the disallowed costs resulted from poor documentation of records and that repayment was necessary to maintain an adequate incentive for recipients to keep proper records. The ALJ, however, reversed the grant officer's assessment of interest on the disallowed costs, determining that the Labor Department had not provided any authority for an assessment of interest against a state government.

The grant officer appealed the ALJ's reversal of the interest assessment to the Secretary. The Secretary determined that DOL possessed a common law right to impose prejudgment interest on a defaulted contractual debt owed by a state and rejected FDOLES's argument that the Debt Collection Act of 1982 abrogated the federal government's common law right to recover interest on debts owed by states. In so concluding, the Secretary rejected the contrary holdings of three federal circuit courts of appeals, *see Arkansas v. Block,* 825 F.2d 1254, 1258 (8th Cir.1987); *Pennsylvania Dep't of Public Welfare v. United States,* 781 F.2d 334, 341–42 (3d Cir. 1986); *Perales v. United States,* 751 F.2d 95 (2d Cir.1984) (per curiam), *aff'g* 598 F.Supp. 19 (S.D.N.Y.1984), and instead relied upon an unpublished opinion from the Sixth Circuit. *County of St.*

Clair v. United States Dep't of Labor, 754 F.2d 375 (6th Cir.1984).

This appeal of the assessment of interest followed.[3]

II. DISCUSSION

FDOLES argues on appeal that the Debt Collection Act of 1982 abrogates the federal government's common law right of collecting interest on a debt owed by a state governmental agency. In making this argument, FDOLES relies upon two provisions of the Act, 31 U.S.C. §§ 3717(a)(1), 3701(c). Section 3717(a)(1) provides that:

> The head of an executive or legislative agency shall charge a minimum annual rate of interest on an outstanding debt on a United States Government claim owed by a person that is equal to the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year. . . .

Because pursuant to § 3701(c) an agency of a state government is not considered a "person" under § 3717, FDOLES contends that the federal government cannot impose a prejudgment assessment of interest against it. *Accord Arkansas v. Block,* 825 F.2d at 1258; *Pennsylvania Dep't of Public Welfare v. United States,* 781 F.2d at 341–42; *Perales,* 598 F.Supp. at 25–26.

The DOL defends the Secretary's conclusion, arguing variously that: (1) the Debt Collection Act, by its very terms, does not apply to this case; and (2) even if the Debt Collection Act does apply to this case, it does not abrogate

DOL's right (both under the statute and under common law) to assess prejudgment interest in this case.

A.

DOL's first contention, that the Act is not applicable in this case, was raised for the first time in this court. As a general rule in administrative law cases, a reviewing court may not affirm an agency decision on grounds not addressed by the agency, but, rather, will remand for the agency to address the issue in the first instance. *SEC v. Chenery Corp.*, 318 U.S. 80, 87–88, 63 S.Ct. 454, 459, 87 L.Ed. 626 (1943). "The effect of this rule is 'that a reviewing court, in dealing with a determination or judgment which an agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency.'" *NLRB v. Episcopal Community of St. Petersburg*, 726 F.2d 1537, 1540 (11th Cir.1984), quoting K. Davis, *Administrative Law Treatise*, § 14.29 (2d ed. 1980). In other words, courts are not entitled to substitute their judgment or determinations of proper policy for those of an administrative agency. If the agency has misapplied the law, its order cannot stand—even if the reviewing court believes that the agency either would reinstate its order under a different theory or would reach the same decision under the proper rule of law. *Chenery Corp.*, 318 U.S. at 94, 63 S.Ct. at 462. Instead, the case must be remanded to the agency to make a new determination.

Adherence to this rule does not mean, however, that this court will allow misconceptions in law that arise during the agency decision-making process to go unchecked. An important corollary to the general rule that courts will not substitute their views for the discretionary deci-

sions of an agency on matters of policy is the recognition that reviewing courts do have the authority and responsibility to correct errors of law made by the agency. *Chenery Corp.*, 318 U.S. at 94, 63 S.Ct. at 462; *Charter Limousine v. Dade County Bd. of County Comm'rs*, 678 F.2d 586, 588 (5th Cir.1982). Particularly in a case such as this where the resolution of the Debt Collection Act's applicability affect the parties' standing to raise the question of whether the Act abrogates the federal government's common law right to collect interest from the states, this court has an independent obligation to consider the applicability issue regardless of whether the issue is raised by either of the parties. *See, e.g., FW/PBS, Inc. v. City of Dallas*, ___ U.S. ___, ___, 110 S.Ct. 596, 607, ___ L.Ed.2d ___ (1990) (emphasizing that federal courts have an unflagging obligation under Article III of the Constitution to ensure that parties have standing to present their claims); *Bender v. Williamsport Area School District*, 475 U.S. 534, 541–43, 106 S.Ct. 1326, 1331–32, 89 L.Ed.2d 501 (1986) (same).

B.

Pursuant to 31 U.S.C. § 3717(g)(2), the relevant portions of the Debt Collection Act do not apply "to a claim under a contract executed before October 25, 1982, that is in effect on October 25, 1982." Thus, the question before this court is whether the current claim falls within this exception thus rendering the Debt Collection Act and its purported preemptive effect inapplicable.

FDOLES does not contest the fact that the DOL's CETA grants may be considered contracts, thereby raising the specter that § 3717(g)(2) may take this case out-

side the Debt Collection Act's reach. *See Bennett v. New Jersey,* 470 U.S. 632, 638–39, 105 S.Ct. 1555, 1559, 84 L.Ed.2d 572 (1985) (observing that many federal grant programs are "much in the nature of a contract") (quoting *Pennhurst State School and Hospital v. Halderman,* 451 U.S. 1, 17, 101 S.Ct. 1531, 1540, 67 L.Ed.2d 694 (1981)). Rather, FDOLES presents two separate arguments, each of which attempts to show that the § 3717(g)(2)exception has not been met and that, consequently, the Debt Collection Act's provisions are applicable to this case. In making these arguments, FDOLES concedes that the meaning of § 3717(g)(2)'s first requirement is unambiguous and that this requirement has been satisfied in this case: the instant claim is premised upon a contract executed before October 25, 1982. FDOLES focuses its attention on the second clause of § 3717(g)(2)—"in effect on October 25, 1982"—and offers two different interpretations of the clause, both of which it claims establishes that this second criterion has not been met.

First, FDOLES contends that this second clause mandates that there exist continued contractual obligations beyond October 25, 1982, before the Debt Collection Act may be viewed as inapplicable. FDOLES avers that the contract in question in this case must be considered as being coextensive with the period covered by the audit. Because the audit period in this case ran from October 1, 1980 through June 30, 1982, FDOLES claims that its contractual obligations ceased on June 30, 1982, and that consequently no contract was "in effect on October 25, 1982" as required under § 3717(g)(2).

This argument is without merit, both as a factual and as a legal matter. With regards to the facts in this case, it is apparent that, while the grant period extended only

from October 1, 1980 through June 30, 1982, FDOLES as the prime sponsor of the federal government's CETA grant[4] assumed continuing responsibilities for monitoring the actions of its contractors and subrecipients to ensure that their actions complied with the program's statutory and regulatory requirements.[5] Among other things, these responsibilities included the continued monitoring and auditing of subrecipients to ensure that their records were being kept in accordance with program regulations and to ensure that the subgrant funds were being expended in compliance with CETA.[6] It is uncontested that FDOLES, as part of its monitoring obligations, engaged in these activities well into 1984.

Moreover, as a matter of law, FDOLES's argument cannot be reconciled with the Supreme Court's decision in *West Virginia v. United States*, 479 U.S. 305, 107 S.Ct. 702, 93 L.Ed.2d 639 (1987). In *West Virginia*, the federal government provided services to West Virginia in 1972. The government billed the state for its services in late 1972 and early 1973. When the state had not remitted payment to the federal government by 1978, the federal government initiated suit. *Id.*, at 306–09, 107 S.Ct. at 704–05. The issue before the Supreme Court in *West Virginia* concerned whether the federal government could obtain prejudgment interest against the state. In holding that the federal government was entitled to prejudgment interest as a matter of federal common law, the Supreme Court decided the issue on the basis of federal common law. The Court declined, however, to reach the issue of whether the Debt Collection Act abrogated the government's federal common law right to collect interest from the states, reasoning that "th[e] statute does not apply to claims arising under contracts entered into before Oc-

tober 25, 1982, and therefore has no force here." *Id.*, at 312 n. 6, 107 S.Ct. at 707 n. 6.[7]

As was the case in *West Virginia*, the contract at issue in this case was executed before October 25, 1982. Thus, even if we were to assume that FDOLES had completed its performance obligations prior to October 25, 1982, *West Virginia* would dictate the conclusion that the Debt Collection Act was simply inapplicable in this matter.[8]

In its second argument, FDOLES seeks to distinguish *West Virginia* by asserting that § 3717(g)(2)'s second clause—"in effect on October 25, 1982"—modifies "claim," not "contract." In other words, FDOLES argues that § 3717(g)(2) provides that § 3717 is not applicable only where: (1) the contract is executed before October 25, 1982, and (2) the government's claim for money owed under the contract is in effect before October 25, 1982. Although this reading would be consistent with the results in *West Virginia* and in *Riles v. Bennett*, 831 F.2d 875, 878 (9th Cir.1987) (per curiam), *cert. denied*, 485 U.S. 988, 108 S.Ct. 1291, 99 L.Ed.2d 501 (1988), this reading requires a construction of the statute neither apparent on its face nor supported by legislative history.[9] *See* S.Rep. No. 97-378, 97th Cong. 2d Sess. 29, *reprinted in* 1982 U.S.Code Cong. & Admin.News 3377, 3405 (the mandatory imposition of interest provision, § 3717, "shall not apply to any claim under a binding contract executed before the effective date of this subsection"). Because we find no evidence to support this strained interpretation of the statute, we decline to attribute the statute with FDOLES's proposed construction.

Accordingly, we conclude that the provisions of the Debt Collection Act are inapplicable to this matter. As a

result, we need not enter the fray and detemine whether the Debt Collection Act abrogates the federal government's common law right to collect interest. *Compare Arkansas v. Block,* 825 F.2d at 1258 (Act abrogates common law interest); *Pennsylvania Dep't. of Public Welfare v. United States,* 781 F.2d at 341–42 (same); *Perales v. United States,* 751 F.2d 95 (2d Cir.1984) (per curiam), *aff'g* 598 F.Supp. 19 (S.D.N.Y. 1984) (same), *with Gallegos v. Lyng,* 891 F.2d 788 (10th Cir.1989) (federal government maintains common law right to recover interest against state and local governments); *County of St. Clair v. United States Dep't of Labor,* 754 F.2d 375 (6th Cir.1984) (same).

C.

Having determined that Act is not applicable to this case, we must now determine whether we must remand this case for a new determination as to the imposition of interest. As we discussed, *supra,* slip op. at 1671–1672, at ____ - ____, the general rule in administrative law cases is that courts, upon finding that an agency made an error of law, are not to presume that an agency will adhere to its original decision notwithstanding its prior misconception of the legal standards. The Supreme Court has, however, recognized a limited exception to this rule: "the rule in *Chenery* has not required courts to remand in futility." *Thornburgh v. American College of Obstetricians and Gynecologists,* 476 U.S. 747, 756 n. 7, 106 S.Ct. 2169, 2176 n. 7, 90 L.Ed.2d 779 (1986) (citing *Illinois v. ICC,* 722 F.2d 1341, 1348–49 (7th Cir.1983)). Our conclusion that the Debt Collection Act's provisions are inapplicable in this case is clearly one that falls within this rule. In making her original decision, the Secretary exercised what she

believed to be her right under the federal common law to impose prejudgment interest. In so doing, she concluded that the Debt Collection Act's provisions did not abrogate her right to do so. Having held that the Debt Collection Act's provisions are not applicable to this case, then the question is solely whether the DOL may, under federal common law, collect prejudgment interest. The Secretary has already made clear what her decision is with regard to that question. Consequently, a remand would be pointless. *See Illinois, v. ICC,* 722 F.2d at 1349.

FDOLES concedes that the Secretary possessed the common law right to impose interest and does not challenge her decision to do so in this case. Consequently, we conclude that Secretary's decision must be affirmed.

AFFIRMED.

FOOTNOTES

1. Pub.L. No. 93-203, §§ 1 *et seq.*, 87 Stat. 839 (1974), *as amended by* Pub.L. No. 95-524, §§ 1 *et seq.*, 92 Stat. 1909 (1978) (repealed 1982). CETA, as amended, was repealed by § 184 of the Job Training Partnership Act, 29 U.S.C. §§ 1501 *et seq.* Under the transitional provisions of that Act, pending cases continue to be adjudicated under CETA. 29 U.S.C. § 1591(e).

2. Pub.L. No. 97-365, 96 Stat. 1749 (1982).

3. *See* 29 U.S.C. § 817(a) (Supp.V 1981) (repealed).

4. *See* 29 U.S.C. § 811(a)(1); 20 C.F.R. § 676.2(a).

5. *See* 29 U.S.C. § 835(a)(1) (repealed); 20 C.F.R. §§ 676.37(a)(3), 676.75-1, 676.75-2. *See generally City of St. Louis v. U.S. Dep't of Labor,* 787 F.2d 342, 346 (8th Cir.1986); *Montgomery County v. Dep't of Labor,* 757 F.2d 1510, 1512–13 (4th Cir.1985).

6. *See, e.g.*, 20 C.F.R. §§ 676.75-1, 676.75-2.

7. Contrary to FDOLES's assertions, it is not possible to characterize this footnote in *West Virginia* as *obiter dictum*. The Supreme Court necessarily had to determine whether the Debt Collection Act was applicable to the case before it. The Court had already concluded that the federal government was authorized under federal common law to collect interest from West Virginia; if the case had not fallen within § 3717(g)(2)'s scope, the Court would have been required to address the additional issue of whether the Act abrogated the federal government's common law right.

8. This conclusion does not nullify the second clause of § 3717(g)(2). As stated earlier, § 3717(g)(2) provides that § 3717's mandatory imposition of interest requirements are not applicable "to a claim under contract executed before October 25, 1982, that is in effect on October 25, 1982." The "in effect on October 25, 1982" clause could have a meaning independent of the prior clause—e.g., a contract executed before October 25, 1982, but not taking effect until January 1, 1983, might not fall within the purview of § 3717(g)(2) and, consequently, might not be covered by the Debt Collection Act.

9. Traditionally, it is not thought that a claim is "in effect"; rather, if Congress had sought to reach this result it would have formulated the statute in a manner such as follows: "this section does not apply to a claim under contract executed by October 25, 1982, where the claim is formally presented by October 25, 1982."